

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTY FIRST DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

-

WRIT PETITION NO : 13564 of 2004

Between:

Nakka Ravikumar, S/o. Mohana Rao, Hindu,
F.P. Shop Dealer-II, Geddakancharam Village, G. Sigadam Mandal,
Srikakulam District.

..... PETITIONER

AND

- 1 The Director of Civil Supplies, Andhra Pradesh, Hyderabad.
- 2 The District Collector (CS), Srikakulam District.
- 3 Panchireddy Venkata Ramanamurthy, S/o. Late Apparao, Hindu,
F.P. Shop Dealer - 1, Geddakancharam Village, G.Sigadam Mandal, Srikakulam
District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction particularly a writ in the nature of MANDAMUS declaring the action of the 1st respondent as arbitrary, illegal and violative of articles 14, 19(g), 21 and 300-A, of the Constitution of India besides gross violation of Principles of Natural Justice and set-aside the impugned procs. vide DCS Proc. NO. N1/6356/2003, dtd. 13-07-2004 of the 1st respondent with all consequential and attendant benefits.

Counsel for the Petitioner : MR.B.M.PATRO

Counsel for the Respondents 1 & 2 :GP FOR CIVIL SUPPLIES

Counsel for the 3rd respondent : Mr. Kowturu Vinaya Kumar

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.13564 OF 2004

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ORDER :

This writ petition is filed questioning the order of the Director of Civil Supplies, A.P., Hyderabad – the 1st respondent herein dated 13-07-2004 whereunder the order of the District Collector (CS), Srikakulam District (2nd respondent) dated 16-11-2003 bifurcating the fair price shop of Gaddekancharam village, G.Sigadam Mandal, Srikakulam District was set aside.

The third respondent herein is the authorized dealer of the fair price shop of Gaddekancharam Village, G.Sigadam Mandal, Srikakulam District. It appears that an enquiry was initiated against the third respondent on the ground of alleged irregularities in supply of essential commodities to the cardholders. During the course of the said enquiry, the Deputy Tahsildar (Enforcement) submitted a report to

the 2nd respondent stating that the Gaddekancharam village is a faction village and that there are two rival groups in the village resulting in constant disputes between the two groups and therefore there is a need to bifurcate the fair price shop into two. On the basis of the said report and having considered the proposal submitted by the Revenue Divisional Officer, Srikakulam Division, the District Collector (CS) vide proceedings dated 16-11-2003 sanctioned bifurcation of the existing fair price shop of Gaddekancharam village into two. Aggrieved by the said order, the third respondent preferred an Appeal before the Director of Civil Supplies, A.P., Hyderabad. The Director of Civil Supplies, allowed the Appeal by order dated 13-07-2004 observing that the bifurcation of shop has resulted in less number of cards and consequently the shop has become economically unviable and there is every chance of the fair price shop dealer indulging in diversion of essential commodities meant for public distribution system into black market. Thus, the order of bifurcation was set aside.

It is to be noted that while the appeal was pending before the 1st respondent, in pursuance of the order of bifurcation the writ petitioner was granted authorization on 09-12-2003 in respect of F.P. Shop No.II of Gaddechenchram village i.e., the newly created shop on bifurcation. His authorization is valid upto 31-03-2005. He filed the present writ petition aggrieved by the order of the 1st respondent dated 13-07-2004 contending inter alia that the said order which was passed without making him a party to the Appeal is arbitrary and illegal.

I have heard the learned counsel for the petitioner and learned Government Pleader appearing for the respondents 1 and 2 and the learned Counsel appearing for the 3rd respondent.

The learned Counsel for the petitioner vehemently contended that the order of the 2nd respondent bifurcating the fair price shop is in conformity with the guidelines issued by the Government in Memo No.148/CS/1/99-1, dated 22-01-1999 and the 1st respondent has erred in interfering with the said order. The learned Counsel further contends that at any rate since the writ petitioner has already been appointed

as dealer of the bifurcated shop on permanent basis, the 1st respondent is not justified in setting aside the order of bifurcation without notice to the petitioner.

On the other hand, the learned Counsel appearing for the 3rd respondent has submitted that the order of bifurcation dated 16-11-2003 having been passed without any notice to the dealer (3rd respondent) and which was solely based on the allegation that he is indulging in irregular distribution of essential commodities being arbitrary, illegal and in violation of the principles of natural justice has been rightly set aside by the 1st respondent in the Appeal. He also contends that the writ petitioner who was subsequently appointed as a dealer of the bifurcated shop has no locus standi to question the order of the Appellate Authority and on that ground alone the Writ Petition is liable to be dismissed. He also submits that the order of the appellate authority which is well reasoned and in which it has been categorically held that the shop has been rendered economically unviable after bifurcation, does not warrant any interference.

May be that on the basis of the complaints received from the cardholders as to the irregularities committed by the third respondent in distribution of essential commodities, the Deputy Tahsildar (Enforcement) recommended for taking disciplinary action. However, on a perusal of the material on record, it cannot be said that the bifurcation was ordered by the 2nd respondent only on the said ground.

It is not in dispute that the 2nd respondent – District Collector is the competent authority for sanctioning bifurcation of the fair price shop. It is true that as per the guidelines dated 22-01-1999 issued by the Government for opening new fair price shop, one of the conditions required is that the shops must be economically viable. So far as viability is concerned, it is made clear in the guidelines that in rural areas, no new Fair Price Shop should be sanctioned if the number of cards to be attached to the fair price shop is less than 350. It was also added that if for special reasons, like dissidence or faction in a village or certain social tensions between one community and another due to caste or religious conflicts, the Collectors may, if they are fully satisfied for splitting the shop for the benefit of the community, they may do

so by giving reasons for such sanction of new shops. The order of bifurcation dated 07-11-2003 ordered by the 2nd respondent shows that even after bifurcation, the two shops are attached 356 cards each. Moreover, it is a matter of record that the Gaddekancharam village is a faction village and two groups are existing in the village, in view of which the Revenue Divisional Officer opined that there is a need to bifurcate the existing shop into two. The law is well settled that the order of bifurcation is an administrative order and when the same is found to be in accordance with the guidelines and in the absence of any allegation of mala fides or arbitrary exercise of power, the same does not warrant any interference.

A Division Bench of this Court in W.A.No.1399 of 2003 dated 05-01-2004 having considered an identical issue observed that the authorization issued in respect of a fair price shop cannot be equated to that of employment or assuring any profit to the dealers and that mere allotment of a particular number of cards, for the purpose of distribution of essential commodities through a particular fair price shop, does not confer any indefeasible right upon any such dealer.

In the circumstances, I am of the view that the order of the 1st respondent setting aside the order of bifurcation only on the ground that the shop will not be viable in case the bifurcation is effected is not only factually incorrect but also contrary to the settled principles of law.

It is also relevant to note the following observations made by the Supreme Court in *DISTRICT COLLECTOR AND ANOTHER v. B.SURESH* with regard to the question whether the fair price shop dealer can claim a right to notice before a decision for bifurcation of the fair price shop is taken.

“Under the provisions of the Andhra Pradesh Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973, which order has been framed under the provisions of the Essential Commodities Act, 1955 a Fair Price Shop Dealer has no licence which such dealer has obtained under the provisions of the Act to deal with the commodities has not been cancelled. The right to trade under Article 19(1)(g) of the Constitution of India is not being affected in any manner. The Government, as a policy decision, decided to reduce the number of cards per dealer. Such decision does not affect the rights, if any, of the Fair Price Shop Dealers and as such the High Court was in error to hold that they were to be given any notice prior to the impugned decision of the State Government.”

In the light of the principles laid down in the above decision, I do not find any merit in the contention of the learned Counsel for the 3rd respondent that the order of bifurcation passed by the 2nd respondent without notice to the 3rd respondent – dealer is unsustainable being violative of the principles of natural justice.

For the aforesaid reasons, the impugned order of the 1st respondent dated 13-07-2004 setting aside the order of bifurcation dated 16-11-2003 cannot be sustained and it is accordingly set aside. Consequently, the Appeal preferred by the third respondent against the order of bifurcation dated 16-11-2003 shall stand dismissed.

Writ Petition is accordingly allowed. No costs.

31st August, 2004.

Gbs

Note:-

Furnish CC in three days.

(B/O)

gbs/kdl

To

- 1 The Director of Civil Supplies, Andhra Pradesh, Hyderabad.
- 2 The District Collector (CS), Srikakulam District.
- 3. 2CCs to G.P. for Civil Supplies, High Court Bldgs, Hyderabad.(OUT).**
4. 2CD copies